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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,606	08/14/2001	Florian Pestoni	ARC920010007US1	9179
23334	7590	02/02/2005	EXAMINER	
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			PWU, JEFFREY C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/929,606

Applicant(s)

PESTONI ET AL.

Examiner

Jeffrey Pwu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/12/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 16 is objected to because of the following informalities: the word "substantially" renders the claim indefinite because it is unclear whether the limitations following the word are part of the claimed invention. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-37 are rejected under 35 U.S.C. 102(e) as being unpatentable over Eyal (U.S. 6,389,467)

Eyal discloses claims:

1. A method comprising the steps of: receiving, at a virtual jukebox device that is communicatively coupled to at least one networked device via a network interface at least one playback request from at least one networked device for rendering at least one audio file (110, 120, 130, 140, 150, 160, 220, 230, 240, 260);  
storing the received at least one playback request in a queue in the virtual jukebox device (col.1, line 51-col.2, line 43; "Media Metadata Table");

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requesting a copy of the at least one audio file associated with the at least one playback request (col.1, line 51-col.2, line 43);

storing the copy of the requested at least one audio file in the virtual jukebox device ("Once metadata is included with the record, then a determination is made in step 760 that the editor operating the interface module may choose to save the auto-extracted metadata already included with the record in the database.");

rendering the stored copy of the requested at least one audio file by the virtual jukebox device; and receiving at the virtual jukebox device, from the at least one networked device via the network interface, at least one vote for or against the at least one audio file (col.13, lines 21-26).

2. The method of claim 1, wherein the step of receiving at the virtual jukebox device the at least one vote from the at least one networked device is performed substantially contemporaneously with the step of rendering the at least one audio file by the virtual jukebox device (col.13, lines 20-26; 1030).

3. The method of claim 1, further comprising the step of providing audio in a shared acoustical environment, the audio corresponding to the at least one audio file being rendered (fig.21, 1974, 1940, 1930).

4. The method of claim 1, wherein the at least one playback request received from the at least one networked device comprises an indication of location of the associated at least one audio file (1950).

5. The method of claim 4, wherein the indication of location of the associated at least one audio file comprises at least one URL (Uniform Resource Locator) for the at least one audio file.

6. The method of claim 1, wherein the step of storing the received at least one playback request in the queue comprises the step of storing in the queue at least one queue item associated with the at least one associated audio file, respectively, wherein each of the at least one queue item

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includes a count of the number of times that an associated audio file has been requested (2075, 2088; fig.20).

7. The method of claim 1, further comprising the step of arranging the received at least one playback request in the queue in a first-in-first-out order (2080, 2010).

8. The method of claim 1, wherein the step of requesting a copy of the at least one audio file associated with the at least one playback request comprises the step of requesting a copy of the at least one audio file from a networked device via the network interface (2075).

9. The method of claim 8, wherein the step of requesting a copy of the at least one audio file from a networked device is accomplished in time for rendering at least a portion of the requested at least one audio file (claim 20).

10. The method of claim 1, further comprising, after the step of rendering the stored copy of the requested at least one audio file, the step of removing from the queue the at least one playback request associated with the rendered at least one audio file (claim 58-61).

11. The method of claim 1, further comprising the steps of: totaling the received at least one vote for or against the at least one audio file; calculating the percent of votes for an audio file currently being rendered relative to the total votes received for and against the audio file; comparing the calculated percent to a threshold; and stopping the rendering of the audio file currently being rendered if the comparison does not meet or exceed the threshold (see "rating system").

12. A method comprising the steps of: rendering an audio file; receiving via a network a message from a networked device, the message comprising one of the following: a vote for the audio file being rendered; and a vote against the audio file being rendered; providing a relative vote indication corresponding to a summation of received votes relating to the audio file being rendered; comparing the relative vote indication to a voting threshold; and stopping the

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rendering of the audio file if the relative vote indication does not meet or exceed the voting threshold (claim 12 is similarly rejected as in claims 1-11).

13. The method of claim 12, further comprising the step of: contemporaneous with the step of rendering the audio file, providing audio in a shared acoustical environment, the audio corresponding to the audio file being rendered (1900; claim 13 is similarly rejected as in claims 1-11).

14. The method of claim 12, further comprising the step of requesting a copy of the audio file from a networked device via a network interface (claim 14 is similarly rejected as in claims 1-11).

15. A method in a virtual jukebox system comprising the steps of: storing a list of previously rendered audio files, the audio files having been rendered in response to received requests from networked devices; completing the rendering of all requested audio files; selecting an audio file from the list of previously rendered files; and rendering the selected audio file (claim 15 is similarly rejected as in claims 1-11).

16. The method of claim 15, further comprising the step of: substantially contemporaneous with the step of rendering the selected audio file, providing audio in a shared acoustical environment, the audio corresponding to the selected audio file being rendered (claim 16 is similarly rejected as in claims 1-11).

17. The method of claim 15, further comprising the step of requesting a copy of the selected audio file from a networked device via a network interface (claim 17 is similarly rejected as in claims 1-11).

18. The method of claim 15, wherein the step of selecting an audio file from the list of previously rendered files comprises the step of: selecting an audio file based on at least one of: the number of times the audio file has been rendered; a random selection method; a history of

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votes associated with the audio file; the time of the day; the time of the year; and the time since a last rendering of the audio file (claim 18 is similarly rejected as in claims 1-11).

19. The method of claim 15, further comprises the steps of: selecting an audio file from the list of previously rendered files before the end of the rendering of a last requested audio file; requesting a copy of a selected audio file from a networked device via a network interface; receiving the copy of requested audio file; storing the received copy of the requested audio file, and rendering the stored copy of the received audio file after the end of the rendering of the last requested audio file (claim 19 is similarly rejected as in claims 1-11).

20. A computer readable medium including computer instructions for operating a virtual jukebox system, the computer instructions comprising instructions for: rendering an audio file; receiving via a network a message from a networked device, the message comprising one of the following: a vote for the audio file being rendered; and a vote against the audio file being rendered; providing a relative vote indication corresponding to a summation of received votes relating to the audio file being rendered; comparing the relative vote indication to a voting threshold; and stopping the rendering of the audio file if the relative vote indication does not meet or exceed the voting threshold (claim 20 is similarly rejected as in claims 1-11).

21. The computer readable medium of claim 20, further comprising computer instructions for: substantially contemporaneous with rendering the audio file, providing audio in a shared acoustical environment, the audio corresponding to the audio file being rendered (claim 21 is similarly rejected as in claims 1-11).

22. The computer readable medium of claim 20, further comprising computer instructions for: requesting a copy of the audio file from a networked device via a network interface (claim 22 is similarly rejected as in claims 1-11).

23. A computer readable medium including computer instructions for operating a virtual jukebox system, the computer instructions comprising instructions for: rendering an audio file;

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receiving via a network a message from a networked device, the message comprising one of the following: a vote for the audio file being rendered; and a vote against the audio file being rendered; providing a relative vote indication corresponding to a summation of received votes relating to the audio file being rendered; comparing the relative vote indication to a voting threshold; and stopping the rendering of the audio file if the relative vote indication does not meet or exceed the voting threshold (claim 23 is similarly rejected as in claims 1-11).

24. The computer readable medium of claim 23, further comprising computer instructions for: requesting a copy of the audio file from a networked device via a network interface (claim 24 is similarly rejected as in claims 1-11).

25. A virtual jukebox system comprising: a network interface for communication with at least one networked device; an audio platform interface for rendering audio files; data memory comprising a queue for storing at least one playback request from at least one networked device for rendering at least one audio file corresponding to the at least one playback request; a program memory; a processor/controller, electrically coupled to the network interface, the data memory, and the program memory; a queue manager, electrically coupled to the program memory, for managing the queue; an audio player manager, electrically coupled to the program memory, for: requesting a copy of the at least one audio file corresponding to the at least one playback request; storing the copy of the requested at least one audio file in the data memory; and rendering the stored copy of the requested at least one audio file; and a voting manager, electrically coupled to the program memory, for receiving, from the at least one networked device via the network interface, at least one vote for or against the at least one audio file (claim 25 is similarly rejected as in claims 1-11).

26. The virtual jukebox system of claim 25, wherein the audio player manager renders the stored copy of the requested at least one audio file substantially contemporaneously with the voting manager receiving the at least one vote for or against the at least one audio file being rendered (claim 26 is similarly rejected as in claims 1-11).



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27. The virtual jukebox system of claim 25, wherein the audio player manager requests a copy of the at least one audio file corresponding to the at least one playback request from a networked device (claim 27 is similarly rejected as in claims 1-11).

28. The virtual jukebox system of claim 25, further comprising an autoplay manager, electrically coupled to the program memory, for storing a list of previously rendered audio files, the audio files having been rendered in response to received playback requests from networked devices; selecting an audio file from the list of previously rendered files; and after the rendering of all audio files associated with playback requests has been completed, rendering the selected audio file (claim 28 is similarly rejected as in claims 1-11).

29. The virtual jukebox system of claim 25, wherein the autoplay manager stops selecting an audio file when a request for an audio file is received (claim 29 is similarly rejected as in claims 1-11'; "The system enables the user terminal to automatically and continuously play back media creations available on the Internet sites.").

30. A list of lists, each of the individual lists containing at least one list item corresponding to at least one song that has been rendered by a virtual jukebox system, the at least one song further being associated with a number of votes for and against the at least one song that were cast during its rendering, and a time of last rendering (claim 30 is similarly rejected as in claims 1-11).

31. A method of selecting from a plurality of previously rendered songs, a song for rendering when no songs are requested, the method comprising the steps of: generating a first random number; using the first random number to select a list of songs from a plurality of lists of songs; generating a second random number; using the second random number to select a song from the selected list of songs; placing the selected song in a queue; and placing a copy of the selected song in a cache; and rendering the selected song from the cache (claim 31 is similarly rejected as in claims 1-11).

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32. The method according to claim 31, wherein the step of rendering the song is substantially contemporaneous with the end of the previously rendered song (claim 32 is similarly rejected as in claims 1-11).

33. The method according to claim 31, wherein the generation of the first random number is weighted based on a predetermined parameter (claim 33 is similarly rejected as in claims 1-11).

34. The method according to claim 31, wherein the generation of the second random number is weighted based on a predetermined parameter (claim 34 is similarly rejected as in claims 1-11).

35. A computer readable medium including computer instructions for selecting from at least two lists of previously rendered songs, a song for rendering when no songs are requested, the computer instructions comprising instructions for: generating a first random number; using the first random number to select a list from a least two lists of songs; generating a second random number; using the second random number to select a song from the selected list of songs; placing the randomly selected song in a queue; placing a copy of the randomly selected song in a cache; and rendering the song from the cache (claim 35 is similarly rejected as in claims 1-11).

36. The computer readable medium of claim 35, further comprising computer instructions for the generation of a random number that is used for weighted list selection based on a predetermined parameter (claim 36 is similarly rejected as in claims 1-11).

37. The computer readable medium of claim 35, further comprising computer instructions for the selection of a song from a selected list of songs which is weighted based on a predetermined parameter (claim 37 is similarly rejected as in claims 1-11).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Pwu whose telephone number is 571 272-6798. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



January 28, 2005

JEFFREY P. WU  
PRIMARY EXAMINER